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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,153	09/30/2003	Glen H. Handlogten	ROC920030061US1	6418
30206 7590 11/26/2010 IBM CORPORATION ROCHESTER IP LAW DEPT. 917 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829				
EXAMINER				
BARON, HENRY				
ART UNIT		PAPER NUMBER		
2462				
NOTIFICATION DATE		DELIVERY MODE		
11/26/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rociplaw@us.ibm.com

Office Action Summary

Application No.

10/676,153

Applicant(s)

HANDLOGTEN ET AL.

Examiner

HENRY BARON

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/11/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3 - 10, and 12 - 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3 - 10, and 12 - 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action
Hierarchical scheduling
Response to Arguments/Remarks

1. In view of the Appeal Brief filed on 8/11/2010, PROSECUTION IS HEREBY REOPENED.

New grounds for rejection are set forth below.

2. To avoid abandonment of the application, appellant must exercise one of the following two options:

- a. file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- b. initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

3. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:
/Seema S. Rao/

Supervisory Patent Examiner, Art Unit 2462.

Provisional Obvious Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894);

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In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

5. The provisional nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A provisional nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

6. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent Application No. 20050072503, hereafter ‘503. Though, as the preamble indicates a different application, different, the elements between the claims in the application and the conflicting patent are essentially the same.

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8. Regarding Applicant claim 1, '503 claim 1 teaches of a method of hierarchical scheduling comprising of receiving, by a network processor, data from one or more pipes, each pipe including a plurality of pipe flows; (claim 1 '503 read selecting a first winning entry from one of a plurality of main calendars during a time unit) selecting, by the network processor, a winning pipe from the one or more pipes from which to transmit data corresponding to the winning pipe; (claim 1 '503 read selecting a first winning entry from one of a plurality of main calendars during a time unit) and transmitting, by the network processor, data from the selected winning pipe flow using a bandwidth corresponding to the winning pipe flow. (claim 2 '503 wherein selecting the first entry from one or the plurality of main calendars during the time unit includes selecting the first winning entry from a highest priority calendar that indicates an entry that needs to be serviced.)

9. Claim 1 '503 does not disclose selecting, by the network processor, a winning pipe from which to transmit data based upon one or more quality of service (QoS) parameters.

10. However, It would have been obvious at the time the invention was made by a person of having ordinary skill in the art to modify the teachings of to modify the teachings of Applicant claim 1 to be based on a QoS parameters, as such parameters are used within the art to distinguish one flow from many.

11. Claim 3 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent Application No. 20050072503, hereafter '503.

12. Regarding Applicant claim 3, '503 claim 3 teaches where selecting a winning pipe from the one or more pipes from which to transmit data corresponding to the winning pipe includes writing data identifying a pipe to a memory address in a group of memory addresses corresponding to the pipe and scanning the group of memory addresses to find data identifying a pipe. (claim 3 '503 .. wherein the first winning entry includes a first entry of a chain i.e. memory, the chain includes a plurality of pipe entries scheduled to be serviced during the time unit.)

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13. Claim 3 '503 does not disclose selecting, by the network processor, a winning pipe from which to transmit data based upon one or more quality of service (QoS) parameters.

14. However, It would have been obvious at the time the invention was made by a person of having ordinary skill in the art to modify the teachings of to modify the teachings of Applicant claim 1 to be based on a QoS parameters, as such parameters are used within the art to distinguish one flow from many.

15. Claim 4 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent Application No. 20050072503, hereafter '503.

16. Regarding claim 4, '503 claim 4 teaches of rewriting data identifying the winning pipe to a memory address in a group of memory addresses parameters corresponding to the winning pipe. (claim 6 '503 .. determining that no pipe flow corresponding to the winning first pipe currently needs to be serviced during the time unit includes accessing a pipe queue corresponding with the winning first pipe for pipe flows that need to be serviced..)

17. Claim 6 '503 does not disclose selecting, by the network processor, a winning pipe from which to transmit data based upon one or more quality of service (QoS) parameters.

18. However, It would have been obvious at the time the invention was made by a person of having ordinary skill in the art to modify the teachings of to modify the teachings of Applicant claim 1 to be based on a QoS parameters, as such parameters are used within the art to distinguish one flow from many.

19. Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 of U.S. Patent Application No. 20050072503, hereafter '503. Though, as the preamble indicates a different application, different, the elements between the claims in the application and the conflicting patent are essentially the same.

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20. Regarding Applicant claim 10, '503 claim 1 teaches of a network processor, data from one or more pipes, each pipe including a plurality of pipe flows; (claim 12 '503 read selecting a first winning entry from one of a plurality of main calendars during a time unit) selecting, by the network processor, a winning pipe from the one or more pipes from which to transmit data corresponding to the winning pipe; (claim 12 '503 read selecting a first winning entry from one of a plurality of main calendars during a time unit) and transmitting, by the network processor, data from the selected winning pipe flow using a bandwidth corresponding to the winning pipe flow. (claim 2 '503 wherein selecting the first entry from one or the plurality of main calendars during the time unit includes selecting the first winning entry from a highest priority calendar that indicates an entry that needs to be serviced.)
21. Claim 12 '503 does not disclose selecting, by the network processor, a winning pipe from which to transmit data based upon one or more quality of service (QoS) parameters.
22. However, It would have been obvious at the time the invention was made by a person of having ordinary skill in the art to modify the teachings of to modify the teachings of Applicant claim 1 to be based on a QoS parameters, as such parameters are used within the art to distinguish one flow from many.
23. Applicant claims 5 – 9 and 12 – 21 are rejected as being dependent on 1, 3, 4 and 10.

Conclusion

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HENRY BARON whose telephone number is (571)270-1748. The examiner can normally be reached on 7:30 AM to 5:00 PM E.S.T. Monday to Friday.
25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. B./
Examiner, Art Unit 2462

HB

/Seema S. Rao/

Supervisory Patent Examiner, Art Unit 2462